

bard *v.* Barcus, 38 Md. 172; Cannon *v.* Crook, 32 Md. 484; Barroll *v.* Peters, 20 Md. 178.

Plenary proceedings must be conducted as prescribed by this section and sections 255 and 256. Where the answer is irregular and none of the testimony appears in the record, and no judgment or decree can be founded upon the record as it stands, the case will be reversed. *Stonesifer v. Shriver*, 100 Md. 27; *Bowling v. Estep*, 56 Md. 567; Cannon *v.* Crook, 32 Md. 485; Barroll *v.* Peters, 20 Md. 178.

Purpose of this section. This section and section 255 only apply where there are matters in issue between the parties, and not to cases where there is no dispute concerning the facts. *Cain v. Warford*, 3 Md. 462.

The act of 1892, ch. 275, authorizes process by summons, order of publication or attachment, to compel appearance in all cases of controversy in the orphans' court. How and when a will may be set aside upon its probate after contest. *Parties. Laches. McCambridge v. Walraven*, 88 Md. 383.

Plenary proceedings and an answer under oath may be demanded at any stage of the proceedings before final adjudication. *Humes v. Shillington*, 22 Md. 358.

The answer must be under oath, and the defect is not waived by arguing the case before the dismissal of the petition. *Cover v. Stockdale*, 16 Md. 7.

This section referred to in construing section 236—see notes thereto. *Conner v. Ogle*, 4 Md. Ch. 451.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to sec. 255.

1904, art. 93, sec. 254. 1888, art. 93, sec. 250. 1860, art. 93, sec. 250. 1798, ch. 101, sub-ch. 15, sec. 17. 1886, ch. 498.

**255.** On such plenary proceeding, all the depositions shall be taken in writing and recorded, and, if either party require it, the court shall direct an issue or issues to be made up and sent to any court of law convenient for trying the same, and the issues shall be tried in the said court of law as soon as convenient, without any continuance longer than may be necessary to procure the attendance of witnesses; and the power of the court of law and the proceedings thereto relative shall be as directed by law respecting the trial of issues, and the orphans' court shall give judgment or decree upon the bill and answer and depositions or the finding of the jury, and may in all cases of contest award costs, in their discretion, and compel payment by attachment and fine, or by attachment and sequestration, or by *feri facias*.

#### Issues.

Purpose of this section. The duty of the orphans' court to make up and transmit issues when required is imperative, and the findings of the court of law are final and must be made effective by the orphans' court. *Price v. Taylor*, 21 Md. 363. And see *Pleasants v. McKenney*, 109 Md. 277; *Keene v. Corse*, 80 Md. 23; *Sumwalt v. Sumwalt*, 52 Md. 346; *Worthington v. Ridgely*, 52 Md. 355; *Waters v. Waters*, 26 Md. 72; *Humes v. Shillington*, 22 Md. 358; *Cook v. Carr*, 20 Md. 410; *Warford v. Colvin*, 14 Md. 552; *Pegg v. Warford*, 4 Md. 396; *Cooke v. Cooke*, 29 Md. 552.

Where issues have been tried and a verdict rendered, other persons (though not parties to the first case) are not entitled to issues involving substantially the same questions. *McCambridge v. Walraven*, 88 Md. 380; *Pleasants v. McKenney*, 109 Md. 277; *Worthington v. Gittings*, 56 Md. 548; *Sumwalt v. Sumwalt*, 52 Md. 346; *Worthington v. Ridgely*, 52 Md. 355; *Pegg v. Warford*, 4 Md. 394; *Warford v. Van Sickle*, 4 Md. 399; *cf. Munnikhuyzen v. Magraw*, 35 Md. 280.

The dismissal of one set of issues before the trial in a court of law, is not a bar to subsequent issues. *Levy v. Levy*, 28 Md. 29; *Price v. Moore*, 21 Md. 373. And see *Price v. Taylor*, 21 Md. 363.